

supported by neither Section 271 nor the Commission's past decisions interpreting that section. The very idea that an RBOC can disable Track A, through its own actions,⁵⁸ and subsequently avail itself of the Track B default mechanism established by Congress is antithetical to the purposes of the 1996 Act in general and Section 271 in particular.

Specifically, BellSouth claims that because:

- (1) it had not by June 30, 1997 (the date three months prior to BellSouth's filing of its Section 271 Application) received a request for the type of interconnection that, if implemented, would "lead to the type of telephone exchange service described in section 271(c)(1)(A)",⁵⁹ and
- (2) by June 30, 1997, no potential competitors were taking reasonable steps toward providing facilities-based residential service in South Carolina,⁶⁰

it may proceed under Track B. However, this novel theory of interLATA entry is unsupported by the facts, the Act and Commission precedent.

⁵⁷(...continued)

potential competitors is taking reasonable steps toward implementing its request in a fashion that will satisfy section 271(c)(1)(A)." *Id.* (emphasis added).

⁵⁸ Aside from the residential cost-price squeeze that BellSouth has created to insulate its residential customer base from competition, BellSouth's failure to properly implement interconnection agreements with competitors and its inability to meet the competitive check list also would foreclose Track A entry at this time. Both of these assertions will be discussed at length below.

⁵⁹ *BellSouth Brief*, at 10-11 (internal quotation marks omitted).

⁶⁰ *Id.*

First, BellSouth's position that it had not received a "qualifying request" by June 30, 1997 is unfounded.⁶¹ As explained above, ACSI has made such a request. Indeed, it seems likely that ITC DeltaCom, Time Warner and others have made similar requests.

Second, BellSouth's view that facilities-based competition must be in place three months prior to the date its Section 271 Application was filed (June 30, 1997) has no statutory basis and is inconsistent with the Commission's decision in *SBC Oklahoma*. Interpreting Section 271, the Commission explained that it is merely the *request* for interconnection that has the *potential* to result in the provision of facilities-based residential and business services that must be made three months prior to a BOC's filing of a Section 271 Application (in the absence of a timely request, the BOC may be eligible to proceed under Track B).⁶² As the Commission explained, a different reading of the statute would (1) create perverse incentives for a BOC to delay implementation of interconnection agreements, and (2) would be inconsistent with the structure of Section 271, namely the Track B "exceptions".⁶³

In support of its case for Track B entry, BellSouth also relies on the SCPSC's determination that the "shortfall of competition" in South Carolina "is not attributable to any

⁶¹ Because BellSouth openly disagrees with the Commission's interpretation of what constitutes a "qualifying request" and because the SCPSC focused solely on whether ACSI and other competitors had commenced provision of facilities-based services, *SCPSC Order*, at 18-19, the existence of other qualifying requests has not previously been addressed in any meaningful way.

⁶² *SBC Oklahoma Order*, ¶ 27.

⁶³ *Id.*, at ¶¶ 28-29, 37-38.

failing by BellSouth."⁶⁴ Simply put, the SCPSC's conclusion is unsupported by the record evidence which included:

- (1) ACSI's statements regarding BellSouth's creation of a residential cost-price squeeze;⁶⁵
- (2) statements by ACSI and Sprint regarding BellSouth's regional difficulties in implementing its interconnection agreements;⁶⁶
- (3) claims by AT&T that BellSouth had failed to properly implement its arbitrated interconnection agreement in South Carolina;⁶⁷ and
- (4) ACSI's statements regarding anticompetitive activity by BellSouth in South Carolina and elsewhere in its service territory.⁶⁸

The SCPSC's erroneous conclusion may be partially attributable to its view that "service quality issues are appropriately addressed as enforcement issues and not as part of BellSouth's compliance with the checklist."⁶⁹ Thus, the SCPSC believes that the fact of BellSouth's agreement to provide a particular UNE must be separated from the question of whether BellSouth is willing or able to deliver on its promise. Acceptance of the SCPSC's viewpoint would render the Track A process a nullity by enabling RBOCs to enter local interconnection agreements without any serious commitment to implement them — or from

⁶⁴ *BellSouth Brief*, at 5; *see also SCPSC Order*, at 20 ("Other than vague allegations, no intervenor has provided any substantive proof that BST has taken any action to prevent or to retard the development of local competition in South Carolina.").

⁶⁵ *ACSI SCPSC Brief*, at 8; *Falvey SCOSC Testimony*, at 332.

⁶⁶ *ACSI SCPSC Brief*, at 5-7; *Falvey SCPSC Testimony*, at 333-42.

⁶⁷ *See SCPSC Order*, at 16-17.

⁶⁸ *ACSI SCPSC Brief*, at 10-11; *Falvey SCPSC Testimony*, at 342-46.

⁶⁹ *Id.*, at 59 ("issue of service quality has no place in this proceeding").

backsliding once Section 271 authority is granted. As is explained later herein, that is precisely the behavior which BellSouth has exhibited with ACSI, and its foot-dragging should not be rewarded by clearing the path to Track B long distance market entry.

B. BellSouth's South Carolina SGAT is Inadequate to Support Track B Entry

Track B entry requires state commission approval of an SGAT that makes available all 14 checklist items in accordance with pricing standards set forth in Section 252(d)(1).⁷⁰

Section 252(d)(1) provides that BellSouth's rates for interconnection and UNEs shall be:

- (1) "based on the cost (*determined without reference to a rate-of-return or other rate-based proceeding*) of providing the interconnection or network element (whichever is applicable), and"
- (2) "nondiscriminatory, and"
- (3) "may include a reasonable profit."⁷¹

Section 252(f)(2) prohibits a state commission from approving an SGAT that does not comply with Sections 251 and 252(d) and the regulations promulgated thereunder. Thus, to the extent that BellSouth's SGAT pricing does not comply with either Section 251 or 252, the SCPSC statutorily is precluded from approving or otherwise letting it go into effect.⁷²

In its order granting approval of BellSouth's SGAT, the SCPSC stated that "Section 252(d) requires that the rates for interconnection and unbundled network elements simply be

⁷⁰ 47 U.S.C. § 271(c)(2)(B)(ii).

⁷¹ *Id.*, § 252(d)(1) (emphasis added).

⁷² See 47 U.S.C. § 252(f)(2). Not surprisingly, the SCPSC's order approving the SGAT has been appealed by AT&T.

based on cost, it does *not* specify what methodology this Commission must use."⁷³

Unfortunately, the SCPSC never explained how it came to the erroneous legal conclusion that the rates contained in BellSouth's SGAT satisfy the standard requiring that rates be cost-based. The fact is that there are at least three reasons why BellSouth's SGAT does not meet the statutory pricing standard and, therefore, never should have been approved or allowed to go into effect. First, some of the prices in the SGAT are based on BellSouth's tariffed rates that were developed in rate-based proceedings and are not cost-based. Second, other prices are based on FCC proxies, which were never intended to form the basis of a Section 271 filing. And third, the SGAT relies upon interim rates and a true-up based on future cost proceedings. Because BellSouth's SGAT includes rates that do not adhere to the pricing standards set forth in Section 252(d)(1), the SCPSC was statutorily precluded from approving BellSouth's SGAT and its order doing so should be deemed null and void for purposes of the FCC's review of BellSouth's Application herein.

1. BellSouth's Nonrecurring Charges Are Based On Rate-of-Return Tariffs

Rates based on rate-of-return tariffs do not meet the Section 252(d)(1) requirement that all rates for interconnection and unbundled elements be cost-based. Nevertheless, BellSouth's SGAT contains critical interim nonrecurring connection charges that were taken from BellSouth's interconnection agreement with ACSI.⁷⁴ Critically, those interim nonrecurring charges were established expressly by cross-reference to tariffed charges for

⁷³ *SCPSC Order*, at 56.

⁷⁴ *Testimony of Robert Scheye*, at 131-32 (hereinafter, "*Scheye Testimony*").

comparable BellSouth retail exchange services.⁷⁵ Thus, critical rates in BellSouth's SGAT that are based on ACSI negotiated rates are not cost-based and, therefore, fail to meet the standard set in Section 252(d)(1).

2. BellSouth Cannot Rely Upon FCC Proxy Rates

BellSouth's SGAT also is defective because BellSouth inappropriately substitutes FCC proxy ceiling rates for the actual cost-based rates that are required by Section 252(d)(1).⁷⁶ The FCC proxy rates were created for use in arbitration proceedings in an effort to help jump-start local competition.⁷⁷ They were never intended to be permanent substitutes for cost-based rates. As the Commission explained:

States that utilize the default proxies we establish to set prices in an arbitration should revise those prices on a going-forward basis when they are able to utilize the preferred economic costing methodology we describe in Section VII.B2.a. . . .⁷⁸

Recognizing that "it may not be possible for carriers to prepare, or for state commissions to review, economic cost studies within the statutory time frame for arbitration proceedings" the Commission further explained that:

Because reviewing and approving such cost studies takes time and because many states have not yet begun, or have only recently begun, to develop and examine such studies, it is critical for the near-term development of local competition to have

⁷⁵ See *ACSI/BellSouth Interconnection Agreement Amendment*, Attachment C-2.

⁷⁶ See *Scheye Testimony*, at 131-32. For example, BellSouth's ULL rate for a 2-wire analog loop, which is derived from the *ACSI/BellSouth Interconnection Agreement Amendment*, is the FCC proxy rate *rounded up* to the nearest whole number.

⁷⁷ Because the proxies were intended to expedite the development of competition, it would be particularly inappropriate for BellSouth to be permitted to rely upon them in a manner that, in ACSI's view, ultimately will discourage competition in South Carolina.

⁷⁸ *Local Competition Order*, ¶ 702.

proxies that provide an approximation of forward-looking economic costs and can be used by states almost immediately. These proxies would be used by a state commission *until it is able either to complete a cost study or to evaluate and adopt the results of a study or studies submitted in the record.* . . .⁷⁹

Notably, BellSouth's reliance on the FCC proxy rates also skirts the Commission's policy that rates for interconnection and UNEs must be geographically deaveraged.⁸⁰ While the proxies have proven valuable as rough estimates of incremental cost for the purposes of expediting the arbitration process, it is clear that the Commission never intended for them to be relied upon *ad infinitum*, and certainly never intended that they would suffice as the basis for SGAT rates and BOC interLATA entry under Section 271.

Even if it were appropriate for BellSouth to rely on FCC proxy rates, it certainly should not be permitted to rely upon ULL rates which were established intentionally at levels which *exceed* the FCC "proxy ceiling" levels. In this case, the ULL recurring charges were purposely established by rounding the FCC proxy ceiling rate *upward* to the next whole dollar. Thus, although the FCC proxy ceiling rate established for South Carolina was \$17.07, the ACSI interim rate imported into the SGAT was \$18.00. ACSI's acceptance of

⁷⁹ *Id.*, ¶ 790 (emphasis added). The SCPSC currently is conducting its review of BellSouth's cost studies and, according to BellSouth, should complete its cost docket in January. Thus, BellSouth's reliance upon the FCC proxies, particularly when it has submitted cost studies to the SCPSC and the SCPSC has nearly completed its review of them, is disingenuous and should not be permitted for Section 271 purposes. Indeed, ACSI believes that the SCPSC should have followed the Georgia, Louisiana and Alabama commissions' lead in passing on making final decisions on BellSouth's Section 271 application until costing dockets are completed.

⁸⁰ *Ameritech Order*, ¶ 292; see also *Local Competition Order*, ¶¶ 764-65.

such a non-cost based interim rate subject to true-up for purposes of initiating service cannot properly be characterized as the cost-based rate which can support a Section 271 application.

3. BellSouth Cannot Rely Upon Interim SGAT Rates Subject to a True-Up

As discussed above, there is no question that many of BellSouth's SGAT rates are not cost-based, but rather are based on rate-of-return ratemaking. Nevertheless, BellSouth claims, and the SCPSC agrees, that because these rates are merely *interim* rates that are subject to a true-up, they somehow are cured of their obvious failure to meet the statutory pricing standards of Sections 252(d)(1) and 251.⁸¹ No basis for this position can be found in the Act.

The plain language of Section 252(d)(1) requires non-rate-of-return cost-based rates, and makes no exception for interim rates, tariffed rates, negotiated rates, or future true-ups. Interim rates amount to nothing more than "promises of *future* performance" which the Commission already has determined will have "no probative value in demonstrating [a BOC's] *present* compliance with the requirements of section 271."⁸² In assessing SBC's attempt to use interim rates for UNEs (also subject to a true-up) in its Oklahoma Section 271 application, DOJ concluded that "[s]ince it is not yet known what the final Oklahoma prices will be or how they will be determined, the provision for a true-up is hardly sufficient assurance that competitors will in fact be charged cost-based prices now or later."⁸³ DOJ reiterated this viewpoint in its assessment of Ameritech's Michigan Section 271 application

⁸¹ See *Scheye Testimony*, at 118-19; *SCPSC Order*, at 53-55.

⁸² *Ameritech Michigan Order*, ¶ 55.

⁸³ *DOJ Evaluation of SBC's Oklahoma Section 271 Application*, at 61-63.

noting that it is "particularly concerned where only interim prices that have not been found to be cost-based are available."⁸⁴ Moreover, DOJ added that "[c]ompetitors will be reluctant to commit their resources to enter a state on a large scale if the economic conditions they will face are highly uncertain and there are incentives for backsliding on the part of the BOC once interLATA relief is granted if final prices have not already been set."⁸⁵ To the extent that BellSouth imported the ULL rates negotiated with ACSI into its SGAT, its ULL rates suffer from all of these failings.

III. EVEN IF BELL SOUTH COULD BE HEARD UNDER TRACK B, ITS APPLICATION SHOULD BE DENIED BECAUSE BELL SOUTH HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

As one of the first CLECs in the southern United States, ACSI has incomparable direct experience with obtaining ULLs, INP and resold local exchange services from BellSouth. Since ACSI began submitting orders in November 1996, BellSouth consistently has failed to meet the Act's requirements that it provision ULLs, INP and resale services in equivalent time-frames and at equal quality with that which it provides to itself when serving similarly situated customers.⁸⁶ As explained below, BellSouth has unreasonably delayed installation of requested services, failed to coordinate ACSI orders, substantially disrupted service to customers for extended periods during switches to ACSI, and subjected ACSI and its customers to a series of unpredictable and unexplained service disconnections well after

⁸⁴ DOJ Evaluation of Ameritech's Michigan Section 271 Application, at 42.

⁸⁵ *Id.*

⁸⁶ 47 U.S.C. § 251(c)(3); *see id.*, § 271(c)(2)(B) (requiring nondiscriminatory access to unbundled network elements).

initial service was established. Accordingly, UNEs, number portability and resale services *are not available as a legal and practical matter* at the level of quality mandated by the competitive checklist.⁸⁷

Despite ACSI's diligent efforts to work with BellSouth since these problems first appeared, there has been no significant improvement in BellSouth's performance. Far from being the isolated start-up problems which BellSouth suggests,⁸⁸ BellSouth's inability to provision services in accordance with the Act is the result of a wholesale systems failure attributable to BellSouth's unwillingness to dedicate adequate resources to meet its legal obligation to provide reasonable access to UNEs. Documents made publicly-available in BellSouth's Section 271 proceeding in Florida confirm what ACSI has experienced first-hand: the two Local Carrier Service Centers ("LCSCs") established by BellSouth to process orders for resale and UNEs are shockingly ill-prepared for the task. Independent auditors retained by BellSouth found pervasive mismanagement, incompetence and systems failures which made the timely and seamless processing of orders nearly impossible. Moreover, BellSouth's refusal to implement automated order processing procedures for ULLs and to provide detailed, accurate and timely performance measurement and standards has directly contributed to ACSI's inability to receive prompt and reliable installation of ULLs, INP and service resale from BellSouth.

⁸⁷ *Ameritech Michigan Order*, ¶ 110.

⁸⁸ See *Affidavit of W. Keith Milner*, ¶¶ 42-46 (hereinafter, "*Milner Aff.*"). In several oblique references to ACSI, Mr. Milner acknowledges "past problems" and "isolated cases of human error" but asserts that all such problems have been corrected. *Id.* The breadth and continuing nature of ACSI's experiences belie the claim that BellSouth's inability to provision ULLs, INP and resale has been cured.

A. BellSouth Is Unable or Unwilling to Provision ULLs and INP as Required by the Act

As the new player in the market, it is essential that ACSI's services be regarded by customers as at least equal in quality to the services currently provided by BellSouth. Since ACSI likely will be blamed for failed installations, regardless of who is actually at fault, it is critical to ACSI that BellSouth be able to install ULLs and INP on time and without undue customer disruption. To address these concerns, the ACSI/BellSouth Interconnection Agreement expressly provides that, wherever facilities are available, BellSouth will install ULLs by the customer due date, that cutovers will ordinarily be accomplished with a service disruption of no more than 5 minutes, and that installation intervals will be at parity to those achieved when BellSouth provides service to its own end-users. Specifically, Section IV.D. of the ACSI/BellSouth Interconnection Agreement requires each of the following:

- Installation intervals must be established to ensure that service can be established via ULLs in an equivalent time-frame as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.
- On each UNE order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.
- Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.
- The standard time expected from disconnection of a live Exchange Service to the connection of the UNE to the ACSI collocation arrangement is 5 minutes.

Indeed, BellSouth routinely fails to return FOCs within 48 hours and installations often occur well after five days.⁹⁰

Even when BellSouth provides a FOC, it often misses its own installation date. For example, in Florida, BellSouth missed the installation date for one customer (with 82 access lines) three times in one week. BellSouth originally promised installation on Wednesday, August 13, 1997, but failed to show up. The installation was rescheduled for Thursday, August 14 at 5 p.m., but cancelled at 4:30 that day, when ACSI was informed that an error had caused the order to be kicked out of the system. BellSouth then promised to install the lines the next day, Friday, August 15 at 9 a.m. By 10:00, however, the BellSouth technician had not yet arrived, and service was not connected until approximately noon that day.⁹¹

Disconnections During Customer Cutover Process. Problems with BellSouth's provisioning began with the very first orders ACSI submitted in its first service market, Columbus, Georgia.⁹² On November 19 and 20, 1996, ACSI placed its first three orders for ULLs.⁹³ Each order involved the conversion of two or fewer POTS lines (the simplest possible cutover) coupled with a request for INP.⁹⁴ ACSI submitted each of these orders manually in accordance with the process established in the ACSI/BellSouth Interconnection

⁹⁰ *Falvey Aff.*, ¶ 27.

⁹¹ *Id.*, ¶ 28.

⁹² *Falvey SCPSC Testimony*, at 335.

⁹³ *Id.*

⁹⁴ *Id.*

- If ACSI has ordered INP as part of a ULL installation, BellSouth will coordinate implementation of INP with ULL installation.

Further, BellSouth agreed that the installation and service intervals for UNEs *"shall be the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers."*⁸⁹

In states where ACSI has submitted orders for ULLs and INP, BellSouth routinely has failed to provide these elements in accordance with the Act or applicable ACSI/BellSouth Interconnection Agreement standards. ACSI's problems in obtaining ULLs and INP from BellSouth fall into three categories: (1) BellSouth's failure to acknowledge orders and provision them on a timely basis; (2) extended periods of disconnected service during the transition from BellSouth to ACSI coupled with a failure to coordinate INP installation with ULL installation; and (3) inexplicable disconnections and service quality problems (*e.g.*, static, noise and clicking) after service is installed.

Order Commitment Delays. Despite repeated requests, BellSouth has not put in place firm provisioning intervals for (1) the time between placement of an order by ACSI and receipt of a "firm order commitment" ("FOC") from BellSouth, and (2) the time between receipt of an order and its implementation. Although BellSouth offered in December 1996 to provide FOCs within 48 hours of placement of an order and to provision ULLs within 5 days of an ACSI order, it has not agreed to amend the ACSI/BellSouth Interconnection Agreement to memorialize the commitment, and has not put the proposed intervals into practice.

⁸⁹ ACSI/BellSouth Interconnection Agreement, Section IV.E.3 (emphasis added).

Agreement and BellSouth guidelines.⁹⁵ Rather than coordinating these orders with ACSI, BellSouth *unilaterally* administered the cutover without contacting ACSI. Moreover, BellSouth completely failed to accomplish the cutover smoothly or seamlessly.⁹⁶ Two of the initial three customers were entirely disconnected for 4-5 hours each. No outgoing calls could be placed, and persons calling the customer received an intercept message indicating that the number was no longer in service.⁹⁷ The disconnection lasted approximately 50-60 times longer than the 5 minute interval called for in the ACSI/BellSouth Interconnection Agreement. The third customer was disconnected for the entire day on which conversion was scheduled, causing severe inconvenience and disruption to the customer.⁹⁸

Moreover, after the loop connection was established, ACSI learned that BellSouth had failed to implement INP as ordered.⁹⁹ As a result, ACSI's new customers neither could dial out nor receive incoming calls on their lines. Calls dialed to the old (BellSouth) telephone number received an intercept message stating that the number had been disconnected. Because these customers were companies with a significant number of incoming calls from their customers, BellSouth's failure to provision INP substantially disrupted their business.¹⁰⁰

⁹⁵ *Id.*

⁹⁶ *Falvey Aff.*, ¶ 29.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Falvey SCPSC Testimony*, at 335-36.

¹⁰⁰ *Falvey Aff.*, ¶ 30.

The severity of these initial problems forced ACSI to suspend its submission of ULL orders in order to preserve its own business goodwill.¹⁰¹ At the same time that ACSI instructed BellSouth to place pending orders on hold, BellSouth unsuccessfully attempted to install ULLs for three additional ACSI customers. Service for each of these three customers was disconnected several times while BellSouth attempted to provision ULLs, but ultimately the cutover attempts were abandoned and the customers were reinstated as BellSouth local service customers.¹⁰²

Ultimately, ACSI filed two formal complaints — one with the FCC and one with the Georgia PSC — as a result of its Georgia experience. Both complaints are pending before the respective commissions.¹⁰³ Despite the fact that it has been over six months since ACSI filed its first complaint, BellSouth continues to routinely miss installation intervals.¹⁰⁴ Indeed BellSouth continues to greatly exceed the 5-minute cutover interval established in the ACSI/BellSouth Interconnection Agreement and disruptions exceeding two hours are not

¹⁰¹ Several months later, ACSI was forced to take the same action in Alabama. *Id.*, ¶ 31.

¹⁰² *Id.*

¹⁰³ Public versions of ACSI's Initial Brief and Reply Brief in *ACSI v. BellSouth*, FCC File No. E-97-09, are attached hereto as Exhibits 3 and 4, respectively. ACSI's refiled Georgia PSC complaint against BellSouth, styled *Complaint of American Communication Services of Columbus, Inc. Against BellSouth Telecommunications, Inc. Regarding Access to Unbundled Loops*, Georgia PSC Docket No. 7818-U, hereafter, ("*ACSI Georgia PSC Complaint*") is attached hereto as Exhibit 5.

¹⁰⁴ See *ACSI Georgia PSC Complaint*, at Exhibit B (chart showing BellSouth's performance in provisioning ULLs during a sample interval taken in mid-April 1997)

uncommon.¹⁰⁵ This experience is consistent with ACSI's experience in Montgomery and Birmingham, Alabama, where ULL cutovers of an hour to two hours remain commonplace. BellSouth also is routinely starting cutovers later than promised. This lack of punctuality exacerbates lengthy disruptions that occur once installation begins.¹⁰⁶

Since the disastrous beginning in Georgia, ACSI has experienced similar disconnection problems in several other BellSouth states. In Montgomery, Alabama, ACSI's largest customer had 22 lines disconnected due to BellSouth's inability to provision an ACSI order. In that case, ACSI placed a "to and from" order, in which it requested that a trunk be disconnected and replaced with other facilities. The connect portion of the order was halted in the system due to a lack of facilities. However, the disconnect was *not* halted, and the customer had the trunk disconnected with no facilities installed to replace it. By 4 p.m. the following day, BellSouth had restored to service only some of the customer's 22 lines.¹⁰⁷

In sum, BellSouth's inability to avoid lengthy disconnections during the customer cutover process jeopardized ACSI's ability to retain existing customers and to attract new customers to its service. ACSI cannot compete with BellSouth if its customers must endure service outages routinely exceeding 4 hours — or if ACSI is made to appear unable to switch a customer to its service.¹⁰⁸

¹⁰⁵ *Id.* Significantly, BellSouth's performance reports do not document such problems as BellSouth's performance standards only measure due dates met. Despite ACSI's repeated requests, BellSouth refuses to report the number of customers cutover in 5 minutes or less, as is required by the ACSI/BellSouth Interconnection Agreement.

¹⁰⁶ *Falvey Aff.*, ¶ 32.

¹⁰⁷ *Id.*, ¶ 33.

¹⁰⁸ *Id.*, ¶ 34.

Post-Cutover Disruptions. Unfortunately, BellSouth's provisioning problems do not stop once the initial cutover has been completed. In fact, once service is established, it is often provisioned improperly (resulting in poor service quality) or disrupted without warning or explanation. One example of an ACSI customer affected by such provisioning problems involves a restaurant chain with a total of five locations in Columbus, Georgia. The restaurants take orders by phone, and have a substantial volume of take-out business during the dinner hour. On Friday, February 21, 1997, just prior to the start of the dinner hour, service to the restaurants was disconnected without warning or explanation, causing them to lose their customary take-out service orders. Service was disconnected at all five locations for approximately two hours. Shortly after the unexpected service disconnection, the restaurant chain terminated service with ACSI and returned its business to BellSouth.¹⁰⁹

A second example involved an insurance firm in Georgia. Service to this customer, which also suffered disruptions during its initial ULL installation, was disconnected on the evening of Friday, February 21, 1997. Again, neither ACSI nor the customer received any warning that the disruption would occur, nor were they given any explanation at the time as to the cause of the problem. This disconnection was particularly disruptive because the customer regularly receives faxes from its home office on Friday evenings. Thus, the disconnection prevented the customer from receiving those faxes on that Friday. As a result of the disconnection, the customer terminated service with ACSI and returned its business to BellSouth.¹¹⁰

¹⁰⁹ *Id.*, ¶ 35.

¹¹⁰ *Id.*, ¶ 36.

Yet another example demonstrating BellSouth's post-cutover provisioning problems involved a Georgia retailer. This customer had its service disconnected on February 24, 1997. Service was disconnected in the late afternoon and was restored within an hour only after aggressive efforts by ACSI employees to restore service promptly. BellSouth has admitted that this disruption was the result of an error by a BellSouth employee.¹¹¹

BellSouth's provisioning problems extend beyond Georgia and are not limited to ULL installation.¹¹² For example, one of ACSI's interconnection trunks in Birmingham, Alabama was installed with the wrong line signalling. This BellSouth provisioning error caused service quality problems for ACSI's customers, including noise, clicks and cutoffs. Significantly, it also decreased modem speeds on lines served by the trunks, which is a key service requirement for many of ACSI's ISP customers. When BellSouth attempted to solve the problem by provisioning a redesigned trunk, ACSI's service was significantly disrupted for one and one-half hours. During this period, ACSI's customers could not make calls to any number served off the Homewood tandem in the Homewood section of Birmingham.¹¹³

Customers in several states in the BellSouth region also have complained of excessive volume losses on lines provisioned to ACSI by BellSouth. ACSI has experienced this problem in Georgia, Kentucky and Alabama. Upon investigation it has been determined that the volume loss is the result of a BellSouth decision to engineer the line with up to an 8

¹¹¹ *Id.*, ¶ 37.

¹¹² One likely reason for this is that CLECs are served by the same BellSouth LCSC, regardless of the BellSouth state in which the provisioning takes place. For example, ACSI's orders are processed by the Birmingham LSCS, regardless of whether they are for ULLs in Georgia or interconnection in South Carolina. *Id.*, ¶ 38.

¹¹³ *Id.*

decibel volume loss. As a result, ACSI receives inferior service, which has caused ACSI to lose customers.¹¹⁴

BellSouth's INP provisioning also has been beset with errors. ACSI has experienced acute problems with INP that have led to lengthy service disruptions across roughly 90 percent of ACSI's customer base in Georgia. On several occasions, ACSI customers suddenly had their number portability terminated and, as a result, incoming calls received false busy signals. ACSI first experienced this problem on April 21, 1997, during an attempt to port four lines for an ACSI customer. INP was delayed for approximately one hour while BellSouth attempted to resolve undisclosed provisioning problems. Two days later, on April 23, 1997, ACSI was deluged with calls from across its customer base reporting that, although they could make outgoing calls (as they did to complain to ACSI), all incoming calls were receiving a busy signal. This outage occurred for approximately one and one-half hours. One month later, on May 22, 1997, ACSI again began receiving reports of "false busies" and customers' inability to receive incoming calls. This time, it took BellSouth approximately two hours to correct the problems.¹¹⁵

As explained by BellSouth in lengthy discussions with ACSI, these outages emanated from BellSouth employee miscues in setting the Simulated Facilities Group ("SFG") parameters in its Columbus, Georgia Main 1AESS switch. BellSouth explained that SFG is a required field in its switch translator programming that is needed to establish remote call forwarding (BellSouth's interim INP method). The SFG field tells the switch how many

¹¹⁴ *Id.*, ¶ 39.

¹¹⁵ *Id.*, ¶ 40.

incoming paths are allowed to be ported to a particular telephone number. According to BellSouth, the Columbus, Georgia Main 1AESS switch has an upper limit of 256 SFGs per switch, although BellSouth apparently reset it to be "unlimited". The April 23 outage occurred when a BellSouth employee reset the SFG to zero, making it impossible for ACSI customers to receive incoming calls. Then, the outage re-occurred on May 22 when a BellSouth employee again inexplicably reset the SFG, this time to 10 (meaning that only 10 ported numbers could be accommodated off that switch).¹¹⁶

The cumulative effect of BellSouth's provisioning problems is illustrated by ACSI's experience with a Georgia auto parts dealer. The customer had a total of eight locations, served by 37 access lines and had agreed to switch to ACSI, with nine lines to be served by ULLs and the remaining 28 served via resale. BellSouth initially failed to provide due dates for provisioning these lines, forcing ACSI to escalate the matter with BellSouth. When BellSouth finally provisioned the order, lines for two locations were crossed, causing considerable confusion and disrupting the customer's business. Shortly thereafter, the customer (along with nearly all of ACSI's customers in Columbus, Georgia) experienced false busy signals as a result of BellSouth's number portability errors. Understandably frustrated by these problems, the customer attempted to return to BellSouth, but reversed its decision when BellSouth made several unsuccessful attempts to re-provision BellSouth local service. ACSI agreed to intervene on the customer's behalf, and the customer agreed to continue using ACSI's service. Nevertheless, the customer continued to experience other

¹¹⁶ *Id.*, ¶ 41.

service disruptions caused by BellSouth. As a result of BellSouth's continuing and long-term provisioning problems, the customer finally switched from ACSI back to BellSouth.¹¹⁷

B. BellSouth Has Failed to Provide Local Exchange Services for Resale in Accordance with the Act

Although ACSI has not yet ordered ULLs in South Carolina, it has entered the market as a reseller of BellSouth's end-user local exchange services.¹¹⁸ ACSI's experience in South Carolina and elsewhere in BellSouth territory shows that resale orders take as long as 14 days for the simplest orders and often as long as 20-30 days for more complex ones. This is far longer than is acceptable in a competitive environment. In addition, ACSI's experience in ordering BellSouth's wholesale products parallels the problems documented above with respect to BellSouth's provisioning of ULLs and INP. The following experiences, all of which occurred in South Carolina, demonstrate that BellSouth is incapable of providing resale services to ACSI at parity with its own retail operations.¹¹⁹

On June 23, 1997, ACSI placed an order for two new ISDN lines on behalf of a customer in Columbia, South Carolina. ACSI received a clarification request on July 24 — one month after the order was placed — regarding the directory listing aspect of the order. Not having received a commitment on an installation date for the ISDN lines, ACSI escalated the situation on August 24 and was able to receive an installation date from BellSouth.

¹¹⁷ *Id.*, ¶ 42.

¹¹⁸ *Falvey SCPSC Testimony*, at 327. ACSI has been reselling local exchange service in South Carolina since April 1997. *Falvey Aff.*, ¶ 43.

¹¹⁹ *Id.*

However, service was not established until September 2, over two months after the order was submitted. BellSouth also mishandled another ACSI order involving the same customer. Those BellSouth miscues resulted in its fulfillment of that order nearly two months after it originally was submitted.¹²⁰

In other South Carolina instances, ACSI has lost customers due to BellSouth's refusal to provide ACSI with installation commitment dates at parity with those it provides to its own resale operations. For example, ACSI promised a 25 business day installation interval (based on the standard time-frame in which BellSouth had been fulfilling ACSI orders) to a prospective Greenville customer that wanted to order two ISDN PRI lines from ACSI. Subsequently, a BellSouth representative contacted the customer and promised installation of the same two ISDN lines in only 10 business days. Not surprisingly, the customer remained with BellSouth due to the shorter installation interval that BellSouth could promise and provide for itself.¹²¹

Finally, in South Carolina, ACSI already has experienced several instances in which BellSouth has delayed providing ACSI with installation dates, while, at the same time, it solicited ACSI's new customers with promises that BellSouth could provide installation more quickly.¹²²

¹²⁰ *Id.*, ¶ 44.

¹²¹ *Id.*, ¶ 45.

¹²² *Id.*, ¶ 46.

C. The Service Quality Problems Experienced by ACSI are the Direct Result of BellSouth's Failure to Deploy Adequate Resources

ACSI believes that BellSouth's dismal record in provisioning interconnection, UNEs, INP and resale is the direct result of BellSouth's failure to deploy the necessary resources to meet its statutory and regulatory obligations. In March 1997, BellSouth commissioned an independent audit of the performance of its Birmingham, Alabama and Atlanta, Georgia LCSCs. The audit found that the LCSCs have an "alarming" level of errors, resulting from employees that are "not effectively trained," employees that are not "train[ed] and develop[ed] . . . to do the work right the first time," and a "passive management style" in which "persistent problems tend to continue before corrective action is taken [and such action] often deals only with the symptoms rather than root causes of the problem."¹²³ The conclusions found in the Independent Audit are direct and fatal to BellSouth's claims of compliance here. Indeed, the auditors summarized their findings as follows:

Our evaluation of [BellSouth's] basic work processes in both resale and unbundled, indicated they lack process documentation, compliance, and the accuracy to provide a predictable, high quality output. We repeatedly observed employee skills deficiency and errors which is negatively impacting both productivity and quality. [BellSouth's] current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating your operating costs per order, and contributing to delays in customer service. The current level of errors is alarming These quality problems and errors are

¹²³ *Analysis Conducted for BellSouth — LCSC; Atlanta, GA — Birmingham, AL; March 3, 1997 — March 13, 1997*, at 2772-73, 2790, 2798 (attached hereto as Exhibit 6) (hereinafter, "*Independent Audit*"). The *Independent Audit* was first obtained on a confidential basis during discovery in ACSI's Georgia formal complaint proceeding before the FCC and recently became public during BellSouth's Section 271 proceeding before the Florida Public Service Commission.

recurring several times per day without supervisory awareness or corrective action.¹²⁴

The conclusions made in the Independent Audit address all aspects of LCSC performance — management, employee training and skills, and ordering and provisioning problems — and confirm that the BellSouth LCSCs are plagued with numerous systemic problems which cause an unacceptable pattern of errors and delay. To highlight the deficiencies found in the Independent Audit, *direct quotations taken from the Independent Audit* appear in the chart directly below.

<i>LCSC Ordering and Provisioning</i>
This level of ineffective utilization is a result of unclear expectations, employee skills deficiencies, the lack of process documentation and control over the work flow. . . . Excessive errors and rework are lowering the quality of your service due to missed dates and excessive lead times. The root causes of these problems continue without supervision identifying the problems or developing corrective action strategies. ¹²⁵
Our evaluation of your basic work processes in both resale and unbundled, indicated they lack process documentation, compliance, and the accuracy to provide a predictable, high quality output. ¹²⁶
We repeatedly observed employee skills deficiency and errors which is negatively impacting both productivity and quality. ¹²⁷
Your current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating your operating costs per order, and contributing to delays in customer service. ¹²⁸

¹²⁴ *Id.* at 2773.

¹²⁵ *Id.*, at 002773.

¹²⁶ *Id.*

¹²⁷ *Id.*

LCSC Ordering and Provisioning

We observed little time devoted to preemptive action to keep problems from occurring or recurring. This "fire fighting" technique results in an approach to problem solving where supervisors address only the symptoms of the problem.¹²⁹

Due to various operating, training and quality problems which are not being resolved, your current level of labor utilization is inflating your operating costs, and building excessive lead-times into your order process.¹³⁰

In your LCSC environment, the clarification requests seem to be used as a "fail safe" to catch quality problems and missing input information prior to order processing. We noted situations in which every portability order required clarification due to missing information. . . . Management is not aware of this condition and is not gathering the data necessary to develop a corrective action strategy with the account teams to solve the problems before they hit the LCSC and force lost time into your operation.¹³¹

We observed different methods being used by multiple employees to perform the same task. This resulted in significant variances in both quality and productivity. This frequently results in errors and rework as vital steps of the process are missed and must be corrected after the fact. This is impacting your customer service and unnecessarily inflating your order processing time.¹³²

Instead of training and developing your people to do the work right the first time, you rely on rework to find errors. These activities do not add value and unnecessarily inflate your operating cost and order lead times.¹³³

¹²⁸ *Id.*

¹²⁹ *Id.*, at 002776.

¹³⁰ *Id.*, at 002790.

¹³¹ *Id.*, at 002791.

¹³² *Id.*, at 002797.

¹³³ *Id.*, at 002798.